

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Milton I. Shadur	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	98 CR 54	DATE	1/11/2005
CASE TITLE	USA vs. Darwin Montana		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

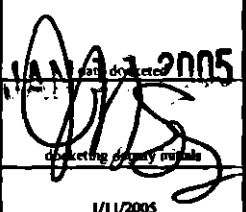
MOTION:

Defendant's motion for reconsideration

DOCKET ENTRY:

- (1) ☒ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due _____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Enter Memorandum Order. Montana's motion for reconsideration is denied.

- (11) ☒ [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input checked="" type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	courtroom deputy's initials	U.S. DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS JAN 11 2005 PM 2:37	number of notices	Document Number 94
				
			date mailed notice 1/11/2005	
			SN mailing deputy initials	
SN		Date/time received in central Clerk's Office		

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DARWIN MONTANA,

Defendant.

No. 98 CR 54

DOCKETED
JAN 11 2005

MEMORANDUM ORDER

On December 22, 2004 this Court summarily denied the effort by Darwin Montana ("Montana") to invoke 18 U.S.C. §3582(c)(2) ("Section 3582(c)(2)") to bootstrap himself into a revision of his sentence based on the Supreme Court's decision in Blakely v. Washington, 124 S.Ct. 2531 (2004), as presumably applicable to the federal sentencing guidelines as well (something that is yet to be seen, because the Supreme Court has not yet decided that issue). Now Montana submits a handwritten Motion for Reconsideration, pointing to a brief statement in United States v. Cabrera-Polo, 376 F.3d 29, 31 (1st Cir. 2004) as supposedly supporting his position.

It is quite true that the always careful Judge Bruce Selya, speaking for the Court of Appeals there, listed as one ground for possible relief under Section 3582(c) that "certain extraordinary and compelling reasons exist that warrant a modification." But because Cabrera-Polo admittedly did not implicate that possibility (376 F.3d at 31), the quoted statement contained no

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elaboration as to what such "extraordinary and compelling reasons" might involve.

If Montana were correct in his present contention, every pre-Blakely sentence that did not meet the standards stated in that opinion would be vulnerable, irrespective of its age. That would obviously prove too much, for there is nothing in Blakely (which the Supreme Court has not declared to be retroactive) or in the generalized language in Cabrera-Polo that would suggest an opening of the floodgates in a way that would subject the federal courts to a massive and unjustified burden. And this Court is certainly not going to countenance such a result even if it were empowered (as Montana contends) to decree Blakely's retroactivity. Hence Montana's motion for reconsideration is also denied.



Milton I. Shadur
Senior United States District Judge

Date: January 11, 2005